

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 8, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:08HD-076

HAWAII

Re-Submittal Mutual Cancellation of General Lease No. S-5152 and Re-Issuance of a Direct Lease to Hawaii Conference Foundation for Youth Athletic, Education, and Religious Purposes, North Kona, Hawaii, Tax Map Key: (3) 7-6-16:33

APPLICANT:

Hawaii Conference Foundation, a domestic non-profit corporation whose business and mailing address is 1848 Nuuanu Avenue, Honolulu, Hawaii 96817.

LEGAL REFERENCE:

Section 171-43.1, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Holualoa 1st and 2nd situated at North Kona, Hawaii, identified by Tax Map Key: (3) 7-6-16:33, as shown on the attached map labeled Exhibit A.

AREA:

33,390 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Hawaii CZO: Open

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State
Constitution: YES _____ NO _____x

CURRENT USE STATUS:

Encumbered by General Lease No. S-5152, Hawaii Conference Foundation, Lessee, for youth athletic, education, and religious purposes. Lease to expire on October 9, 2011. Last rental reopening occurred on October 10, 2011. Rent is currently \$132.00

per annum.

LEASE TERM:

Sixty-five (65) years.

COMMENCEMENT DATE:

The first day of the month to be determined by the Chairperson.

ANNUAL RENT:

\$480.00 per annum.

METHOD OF PAYMENT:

Semi-annual payments, in advance.

RENTAL REOPENINGS:

At the 10th, 20th, 30th, 40th, 50th, 60th years of the lease term, by staff or independent appraisal.

PERFORMANCE BOND:

Twice the annual rental amount.

PROPERTY CHARACTERISTICS:

Utilities - Electricity, telephone, water
Slope - Level
Elevation - Sea level
Rainfall - 10 inches per year
SCS Soil Series - Not applicable
Land Study Bureau - Not applicable
Legal access to property - Staff has verified that there is legal access to the property off of Alii Drive.

Subdivision - Staff has verified that the subject property is a legally subdivided lot.

Encumbrances - None

DCCA VERIFICATION:

Place of business registration confirmed:	YES	<u>x</u>	NO	_____
Registered business name confirmed:	YES	<u>x</u>	NO	_____
Applicant in good standing confirmed:	YES	<u>x</u>	NO	_____

APPLICANT REQUIREMENTS:

Not Applicable

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1 that states "Operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

BACKGROUND:

The Land Board at its meeting of October 10, 1986, under agenda Item F-3 approved the direct lease of Hale Halawai O Holualoa to Hawaii Conference Foundation (HCF) and amended its approval to include a provision that the property be open for public use. This would allow HCF to restore the old church and maintain the graves located on the property as well as use the property for youth athletic, educational and religious purposes. HCF's plan would be done in stages. The first phase would involve site cleanup. Debris would be removed, land cleared, usable rock would be relocated, trees and branches would be trimmed and/or removed, and the grounds would be grassed. Approvals and permits would be obtained for water and electric services, installation of cesspool, timer sprinkler system for the cemetery, and the restoration of the seawall. The second phase would be the design and construction of the Fellowship/Community Hall, landscaping, and furnishing of the Fellowship/Community Hall. The third phase would involve research work and actual restoration work of Hale Halawai O Holualoa.

The Land Board at its meeting of June 9, 2005, under agenda Item D-5, approved and amended staffs recommendation for a reconsideration of the lease rent under General Lease No. S-5152. The Board approved to continue the \$132 per annum lease rent until October 9, 2011. Subsequently, the Land Board at its meeting of September 9, 2005, under agenda Item D-6, amended its approval of June 9, 2005 by deleting all provisions for a rental reopening.

By letter dated March 31, 2008, Mr. John M. Derby, Sr., Executive Secretary for Hawaii Conference Foundation is requesting either an extension of the existing lease or a new 30-year lease. Hale Halawai O Holualoa is looking to expand its facilities. After 6 years, they finally received a Shoreline Management Exemption which will allow for the construction of a multi-purpose building near the northwest corner of the property. The estimated cost for the building is about \$115,000. They are in the process of applying for a building permit.

The Land Board at its meeting of May 23, 2008, under agenda Item D-9, approved staff's recommendation to withdraw its request to

mutually cancel General Lease No. S-5152 and issue a direct lease to Hawaii Conference Foundation. The Deputy Attorney General has questioned if the tenant had done an EA for the above-mentioned improvements. The answer was not available at the time of the meeting.

The tenant and their consultant has provided us a copy of a letter dated April 9, 2007, from former Mr. Christopher Yuen, Planning Director stating: "Although an environmental review is required under HRS 343 for any project within the State and National Registers of Historic Places, certain activities are exempt from environmental review. These classes of exempt action EIS rule includes "Class 2. Replacement or reconstruction of existing structures and facilities" and Class 8. Demolition of structures except historic structures". Therefore, we concur that these projects are exempt from the requirement regarding the preparation of an environmental review. Exhibit B.

By letter dated November 17, 2009, Mr. Sherman S. Hee, Executive Director for Hawaii Conference Foundation, is requesting the Land Board issue Hawaii Conference Foundation a new lease.

ANALYSIS:

The highest and best use allowable in the county zoning is what currently exists. Applicant is not proposing to change the use.

Applicant has provided evidence of 501(c)(3) status, therefore qualifies for a direct lease. Hale Halawai O Holualoa is already on the National and State Register of Historic Places. Continued preservation of this property is important to the State.

Staff has requested information on the Applicant's operations, services, program measurements, budget and funding. [Exhibit C]

As of December 14, 2009, the Lessee is in compliance with all lease terms and conditions. Rent is paid up to October 9, 2010. Liability insurance expires on October 1, 2010. Lessee has posted a \$264 cash bond. In the past two (2) years, no Notice of Default letters were issued.

Applicant has not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Staff is recommending the new lease be for 65 years. All non-profits in good standing, lease terms should be similar and consistent.

DISCUSSION:

As background, the Board of Land and Natural Resources (Board)

typically issues leases to private individuals and entities via public auction. The new rent at reopening is established at fair market rental value by an appraisal. If the tenant or prospective tenant is an eleemosynary (charitable) organization, the Board may issue the lease, at a nominal rent, by direct negotiation. The statute providing the Board this authority is as follows:

§171-43.1 Lease to eleemosynary organizations. The board may lease, at a nominal consideration, by direct negotiation and without recourse to public auction, public lands to an eleemosynary organization which has been certified to be tax exempt under sections 501(c)(1) or 501(c)(3) of the Internal Revenue Code of 1986, as amended. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service. [L 1970, c 83, §5; am L 1971, c 100, §1; am L 1982, c 202, §1; am L 1991, c 212, §3]

It is noted that the 501(c)(1) organization must be both organized by an Act of Congress and be an instrumentality of the United States, while the 501(c)(3) organization is a privately organized charitable organization.

Therefore, when considering lease dispositions to eleemosynary (charitable) organizations or religious organizations, the Board may issue the lease by public auction at fair market rent, or by direct negotiation at an amount below fair market rental (i.e., nominal rent). On May 13, 2005, the Land Board established a Minimum Rent Policy that stated, among other things, that the Minimum Rent for Lease be no less than \$480 per year. Land Division generally issues Leases at fair market rental value as determined by an appraiser or via public auction. Staff believes "nominal rent" under Section 171-43.1, Hawaii Revised Statutes ought to be anywhere between fair market rent, or lower, but not lower than the minimum rent of \$480 per year.

There should be a reasonable and fair annual rent for all of Land Divisions' non-profit tenants. Therefore, staff is recommending the new annual rent be \$480.

RECOMMENDATION: That the Board:

1. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the mutual cancellation of General Lease No. S-5152, Hawaii Conference Foundation, covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current mutual cancellation lease document form, as may be

amended from time to time;



- B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a direct lease to Hawaii Conference Foundation covering the subject area under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current non-profit lease document form, as may be amended from time to time;
 - B. Review and approval by the Department of the Attorney General; and
 - C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

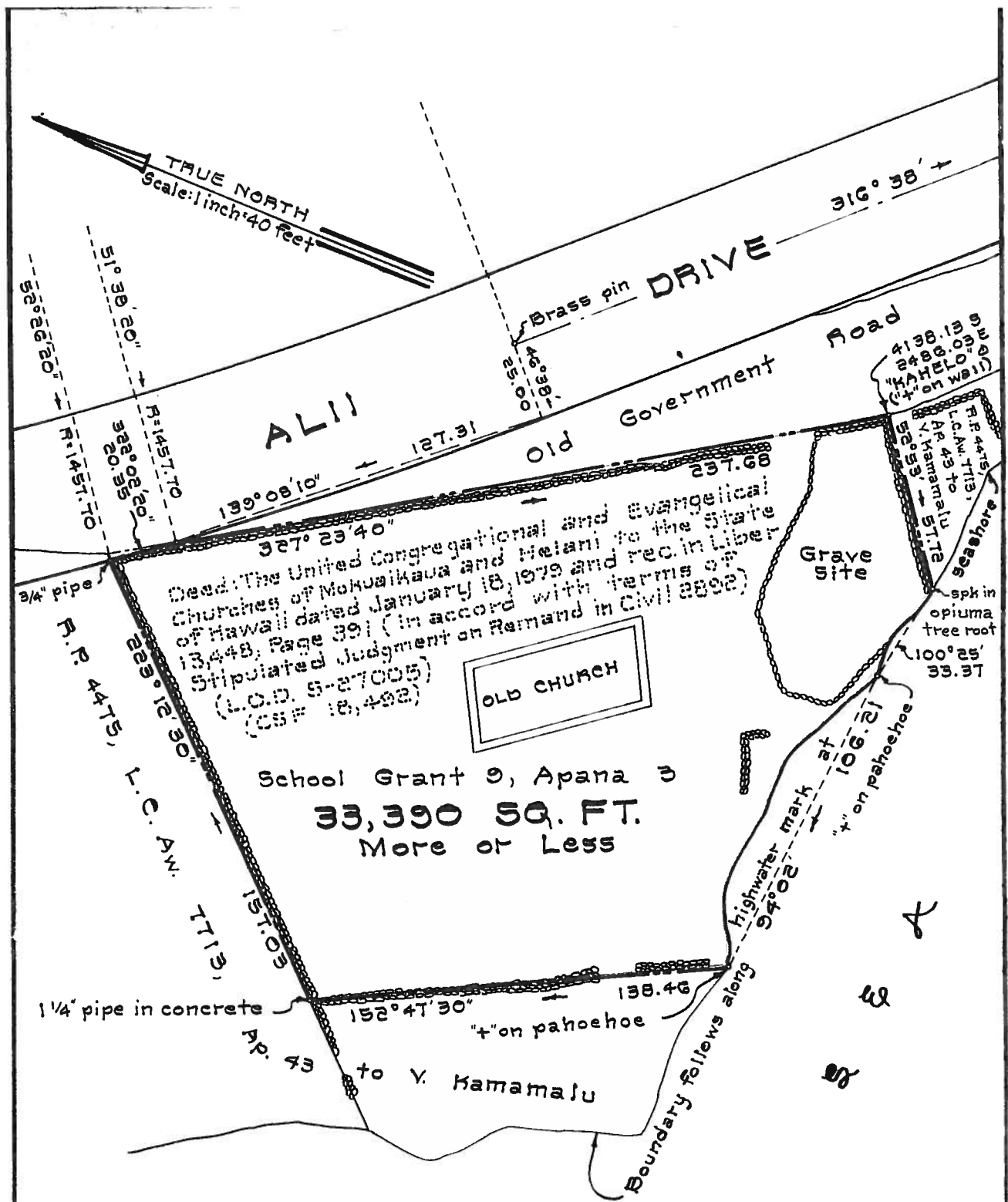


Charlene E. Unoki
Assistant Administrator

APPROVED FOR SUBMITTAL:

Laura H. Thielen, Chairperson



HALE HALAWAI O HOLUALOA

Holualoa 1st and 2nd, North Kona, Island of Hawaii, Hawaii

Scale: 1 inch = 40 feet

JOB H-409 (86)

C. BK

TAX MAP: T-G-16: P. 13

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

C. S. F. No. 20488

STATE OF HAWAII

EXHIBIT 'A'

H.S.N. Nov. 26, 1986

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

April 9, 2007

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo HI 96720

Dear Mr. Fuke:

Subject: Special Management Area Use Permit Assessment Application (SAA 07-000240)
Applicant: Living Stones Congregational Church
Land Owner: State of Hawaii, Department of Land and Natural Resources
Request: After-the-Fact Demolition and Construction of a New Hall/Storage/Restroom Facility with Related Improvements
Tax Map Key: 7-6-16:33, Ali'i Drive, North Kona, Hawaii

This is in response to your Special Management Area Use Permit Assessment Application received on March 7, 2007 for the reconstruction and addition to an existing meeting hall.

After a staff site inspection on March 20, 2007 confirmed that the meeting hall was removed, the nature of development/activity was determined to be for the after-the-fact demolition and construction of a new hall/storage/restroom facility with related improvements. Further, by letter dated April 5, 2007, confirmation was received that the conceptual building plans would remain the same.

According to Hawaii Revised Statutes (HRS) Chapter 205A-22 and Planning Commission Rule 9-4(10)A(v), the "Construction, reconstruction, demolition, or alteration of the size of any structure" is considered to be a "development". Therefore, either a Special Management Area Minor Permit or a Special Management Area (Major) Use Permit is required.

Although an environmental review is required under HRS 343 for any project within the State and National Registers of Historic Places, certain activities are exempt from environmental review. The classes of exempt action under EIS rule includes "Class 2. Replacement or reconstruction of existing structures and facilities" and "Class 8. Demolition of structures except historic structures". Therefore, we concur that these projects are exempt from the requirement regarding the preparation of an environmental review.

Hawai'i County is an Equal Opportunity Provider and Employer.

EXHIBIT "B"

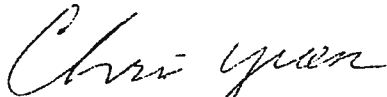
Mr. Sidney Fuke
Page 2
April 9, 2007

The total cost/fair market value of the development is less than \$125,000. However, the application must still be reviewed by the Chief Engineer of the Department of Public Works for compliance with Chapter 27, Flood Control, of the Hawaii County Code, to ensure that there will be no substantial adverse effect on the Special Management Area.

After receipt of comments from the Chief Engineer, a determination will be made as to whether a Special Management Area Minor Permit or a Special Management Area (Major) Use Permit is required.

If you have questions, please feel free to contact Esther Imamura of this office at (808) 961-8288, ext. 257.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

ETI:cd

P:\wpwin60\CZM\SMMA\2007\SAA 07-240 Fuke Living Stones CC.rtf

xc: Ms. Esther Imamura, Long Range Planning

APPLICATION AND QUALIFICATION QUESTIONNAIRE
(Non-Profit)

Write answers in the spaces provided. Attach additional sheets as necessary, clearly indicating the applicable section number.

Part I: General Information

1. Applicant's legal name: Hawaii Conference Foundation
2. Applicant's full mailing address:
1848 Nuuanu Avenue
Honolulu, Hawaii 96817
3. Name of contact person: Mr. Sherman S. Hee, Executive Director
Contact person Phone No.: 808-791-5638 Fax No.: 808-521-7196
4. Applicant is interested in the following parcel:
Tax Map Key No.: 3-7-6-16-33 Location: 76-6224 Alii Drive, Kailua-Kona, HI 96740
If Applicant is current lessee: General Lease No.: S-5152
5. When was Applicant incorporated? November 21, 1968
6. Attach the following:
 - A. Articles of Incorporation
 - B. Bylaws
 - C. List of the non-profit agency's Board of Directors
 - D. IRS 501(c)(3) or (c)(1) status determination
 - E. Tax clearances from State of Hawaii and respective county Real Property Tax Office.
 - F. Audited financial statements for the last three years. If not audited, explain why.
If Applicant is a new start-up, attach projected capital and operating budgets.
 - G. Any program material which describes eligibility requirements or other requirements to receive services

Part II: Qualification

7. Is Applicant registered to do business in Hawaii: Yes/No
8. Has Applicant received tax exempt status from the Internal Revenue Service? Yes/No
9. Is Applicant licensed or accredited in accordance with federal, State or county statutes, rules, ordinances, to conduct the proposed activities? Yes/No

List all such licenses and accreditations required: Not for Profit Corporation

10. Is Applicant in default or otherwise not in good standing with any State department (e.g. POS agency, DCCA, DLNR, etc.)? Yes/No

If yes, explain:

11. Has Applicant had a State of Hawaii lease, permit, license, easement or sale in fee cancelled within the last five years? If yes, list: Yes/No

<u>Doc. No.</u>	<u>Type of Agreement</u>	<u>Term of Agreement</u>

12. Does Applicant have any policies which discriminate against anyone on the basis of race, creed, color, national origin, sex or physical handicap? Yes/No

If yes, explain:

13. Has Applicant received funding from a federal, State, or county government agency, the Aloha United Way, and/or a major private foundation within the last three years? Please list all such contracts below: Yes/No

<u>Agency</u>	<u>Contract Term</u>	<u>Contract Amount</u>
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

14. If Applicant has not received funding from a federal, State or county government agency, the Aloha United Way and/or a major private foundation during the past three years, describe Applicant's qualifications to effectively perform the proposed services, including but not limited to, grants or subsidies received from non-major, private fundors and/or staff or Board members who possess significant experience in Applicant's service field.

Hawaii Conference Foundation is the sixth largest non-grantmaking foundation
in Hawaii and is the faithful steward of the assets of the Hawaii Conference
United Church of Christ and its Associations, Churches and affiliate organizations.

Part III: Program Activities and Persons to be Served

15. What activities will be conducted on the premises to be leased?

Hale Halawai O Holualoa Church which is now known as Living Stones Church
uses the property and its cemetery for religious ministries.

16. What are the specific objectives of these activities?

To serve the community of West Hawaii by establishing spiritual and moral
foundations for life, providing hope for the hopeless and caring for those
in physical, emotional or spiritual need.

17. Describe the community need for and the public benefit derived from these activities.

These activities provide individuals and families with a sense of ultimate
purpose in life, a basis for hope for the future and practical tools to
better handle relationships, work and the trials and stresses of daily life.

18. Describe the targeted population for these activities by: 1) age group, 2) gender, 3) ethnic
background, 4) income level, 5) geographic location of residence, 6) special needs/disability, and 7)
other applicable characteristic(s).

1. Age - Preschool - 99 years	5. Geographic location - West Hawaii
2. Gender - Male and Female	6. Special needs/disabilities - Open
3. Ethnic background - Any	and accessible to all
4. Income level - Not a consideration	

19. Describe all eligibility requirements of clients to participate in the activities, e.g. age, income level,
ethnic background, income level, disability, etc.

None

20. Do you require membership to participate in these activities?
If yes, list the requirements of becoming and remaining a member:

Yes/No 

21. How many unduplicated persons will engage in the activities annually?

<u>Activity</u>	<u>Persons Per Year</u>
Sunday worship	2000 - 2500
Free Meals	250 - 300
Youth (13 - 17)	100 - 150
Children (Preschool - 12)	150 - 200
Marriage & Family Training	150 - 200

22. Is State funding made available for the activities to be conducted on the leased premises?

Yes/No

If yes, by which State agency: _____

23. List all activities to be conducted on the leased premises which require payment of excise taxes, e.g. subleasing, sale of products or services. Include an estimate of annual gross revenues from each activity.

None

Development of the Land

24. Describe the proposed site development plan for the property, indicating the location and size of buildings, parking areas, landscaped areas and related uses. Attach sketch of plan if available.

There is currently a historic building on the property. Storage and restroom facilities are needed.

25. What improvements to the land do you intend to make and at what cost?

Storage and restroom facilities are needed.

26. How will the improvements be funded?
By donations from members of Living Stones Church.

27. Describe all environmental, land use and other permitting requirements which must be met to develop the land as proposed. None are needed. No further development is planned.

28. Will you be subleasing any portion of the property? If yes, describe the sublease uses:
No.

Part V: Notarized Certification

I/We hereby certify that the statements and information contained in this Application and Questionnaire, including all attachments, are true and accurate to the best of my/our knowledge and understand that if any statements are shown to be false or misrepresented, I/we may be disqualified from receiving a lease or my/our lease may be canceled.

Hawaii Conference Foundation

Hawaii Conference Foundation

Applicant Name

Applicant Name

By: David Y. Hirano

By: David Iha

Its: David Y. Hirano - Chairman

Its: David Iha - Treasurer

Date: November 18, 2009

Subscribed and sworn to before me this
18th day of November, 2009.

[Signature]
Notary Public

County of: Honolulu

State of: Hawaii

My commission expires: 12/26/12